



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 7, 2005

Ms. Margo M. Kaiser  
Assistant General Counsel  
Open Records Section  
Texas Workforce Commission  
101 E. 15<sup>th</sup> Street  
Austin, Texas 78778-0001

OR2005-04964

Dear Ms. Margo M. Kaiser:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 225475.

The Texas Workforce Commission (the "commission") received a request for federal subpoenas received by the commission as part of a criminal investigation. You claim that the requested information is not subject to the Act, and, alternatively, that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered your arguments and reviewed the submitted information.

Initially, we address your assertion that the requested information constitutes records of the grand jury and is therefore not subject to the Act. In Open Records Decision No. 513 (1988), this office concluded that, when a governmental body holds or collects information pursuant to a grand jury subpoena or at the direction of the grand jury, the governmental body is acting as the agent of the grand jury and information that is so held or obtained is within the grand jury's constructive possession and is therefore not subject to the Act. *See also* Gov't Code § 552.003. However, if a governmental body holds or collects information without the grand jury formally requesting or directing the governmental body to do so, then the information is not deemed to be in the grand jury's constructive possession. In this instance, although the commission received the requested subpoena from the grand jury, you do not represent to this office, and it is not otherwise apparent from our review, that the commission holds the subpoena at the request or direction of a grand jury. Thus, we conclude that the requested

information is subject to the Act and must be released unless an exception to disclosure is applicable. *See* ORD 513 at 4 (mere fact that governmental body submits information to grand jury does not, when taken alone, mean that information is in grand jury's constructive possessions when information is also held by governmental body).

We turn now to your claimed exceptions. Section 552.108(a) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." By its terms, section 552.108 applies only to a law enforcement agency or a prosecutor. The commission is not a law enforcement agency. This office has determined, however, that where an incident involving alleged criminal conduct is still under active investigation or prosecution, section 552.108 may be invoked by any proper custodian of information that relates to the incident. *See* Open Records Decision Nos. 474 (1987), 372 (1983) (where incident involving allegedly criminal conduct is still under active investigation or prosecution, section 552.108 may be invoked by any proper custodian of information relating to incident). Where a non-law enforcement agency has custody of information relating to a pending case of a law enforcement agency, the agency having custody of the information may withhold the information under section 552.108 if the agency demonstrates that the information relates to the pending case and provides this office with a representation from the law enforcement entity that the law enforcement agency wishes to withhold the information.

You inform us that the requested documents relate to a pending criminal investigation and that the United States Attorney's Office objects to the release of the information as its release could impair the investigation being conducted. Based upon these representations, we conclude that the release of the requested documents would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Thus you may withhold the requested information based on section 552.108(a)(1). As our ruling is dispositive, we need not address your remaining arguments.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full

benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

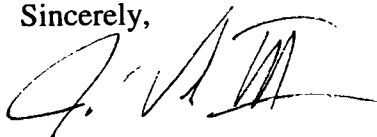
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



José Vela III  
Drafting Attorney  
Open Records Division

JV/krl

Ref: ID# 225475

Enc. Submitted documents

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(w/o enclosures)